

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Civ. Action No. 2:20-cv-02600

JESSICA JONES, et al.,

Plaintiffs,

v.

BAIN CAPITAL PRIVATE EQUITY, et al.

Defendants.

Civ. Action No. 2:20-cv-02892

**RESPONSE TO PLAINTIFFS' MOTION REQUESTING AN EXPEDITED HEARING
ON DEFENDANTS' APPEAL OF ORDER GRANTING IN PART AND DENYING IN
PART MOTION TO QUASH OR MODIFY SUBPOENA DIRECTED TO MARLENE
COTA AND FOR PROTECTIVE ORDER**

Varsity Brands, LLC, Varsity Spirit, LLC, Varsity Spirit Fashions & Supplies, LLC, Charlesbank Capital Partners, and Bain Capital Private Equity (“Defendants”) oppose Plaintiffs’ request for an expedited hearing on Defendants’ appeal of the Chief Magistrate Judge’s Order Granting in Part and Denying in Part Motion to Quash or Modify Subpoena Directed to Marlene Cota and for Protective Order. *See Fusion Elite* at ECF No. 198. Plaintiffs did not request a hearing in their response—as required by LR 7.2(d)—despite their awareness of the April 18, 2022 fact discovery deadline at that time. *Id.* at ECF No. 202. In any event, a hearing is unnecessary

because the issues have been thoroughly briefed and can be resolved on the papers. Defendants therefore oppose the motion.

Defendants also oppose Plaintiffs' motion because it repeats many of the substantive arguments found in Plaintiffs' response to Defendants' appeal, which is improper. *See Fusion Elite*, ECF No. 202. Defendants respectfully refer the Court to their appeal for Defendants' positions on these improperly repeated arguments. *Id.* at ECF No. 198.

Finally, Plaintiffs' motion implies—falsely—that Defendants do not deny the allegation that Varsity provided Ms. Cota with the documents at issue following her termination. *See id.*, ECF No. 226 at PageID 4253. The truth is that Defendants have disputed that fact since their very first correspondence with Ms. Cota's attorney regarding the subpoena. *See id.*, ECF No. 198 at PageID 3101; ECF No. 178-3 at PageID 2747.

For all of these reasons, Defendants oppose Plaintiffs' request for an expedited hearing on Defendants' appeal. Of course, if the Court would like the parties to appear for argument, Defendants stand ready to do so.

Dated: March 31, 2022

Respectfully submitted,

s/ Matthew S. Mulqueen

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